

DATE: April 27, 2006

In Re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 04-07214

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Sabrina E. Reed, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's excessive indebtedness has not been mitigated. A determination of trustworthiness and access to personal sensitive information is denied.

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulations 5200.2R, Personnel Security Program (Regulation), dated January 1987.

On June 17, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-1).

The Applicant responded to the SOR in writing on July 14, 2005, in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on January 17, 2006. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 6, 2006. The Applicant submitted no reply to the FORM.

The case was assigned to the undersigned for resolution on March 28, 2006.

FINDINGS OF FACT

The Applicant is 35 years old. She is employed by a defense contractor and is applying for an ADP-I position with her employer.

The Government opposes the Applicant's request for a determination of trustworthiness, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for a determination of trustworthiness and access to sensitive personal information because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant is indebted to the six creditors set forth in the SOR that total sum of approximately \$17,847.00. (*See* Government Exhibits 7 and 8). The Applicant admits the debts set forth in allegations 1(c), a debt in the amount of \$2,823.24, 1(d), a debt in the amount of \$800.50 and, 1(f), a debt in the amount of \$124.87, the three debts totaling \$3,748.00. She denies the debts set forth in allegations 1(b), a debt in the amount of \$1,491.90 and 1(e), a debt in the amount of \$607.39, both debts totaling \$2,099.29, asserting that the debts have been charged off by the creditors. She indicates that allegation 1(a), a debt in the amount of \$12,000.00 has been paid. She has provided no documentary proof of payment.

In her answer to the SOR, the Applicant states that she has enlisted the assistance of a credit attorney to clear up her past due debt. However, she has failed to submit documentation to support this.

The Applicant's Public Trust Position Application (SF 85) dated August 8, 2003, shows extended periods of unemployment that may have contributed to her financial difficulties. (*See* Government Exhibit 6). However, it also shows that she has been employed full time since July 2003. Credit reports of the Applicant indicate that since 1998 she has experienced financial difficulties and each of the delinquent debts set forth in the SOR remain in delinquent status. (*See* Government Exhibits 7 and 8). The Applicant has provided no documentary evidence concerning the status of the debts or that she has made any effort to pay them. (*See* Government Exhibit 9). Her financial statement dated October 31, 2003, indicates that after her monthly expenses are paid, she has a net remainder of \$356.28, in disposable income. (*See* Government Exhibit 10). It is not clear from the information in the record why she has not used this disposable income to pay her delinquent debts.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline F (Financial Considerations)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances

- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

A determination of trustworthiness or access to sensitive personal information is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for a determination of trustworthiness and access to sensitive personal information may be involved in financial difficulties which demonstrates poor judgment and unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and a determination of trustworthiness. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a determination of trustworthiness.

In this case the Government has met its initial burden of proving that the Applicant has engaged in financial irresponsibility (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his eligibility for a determination of trustworthiness.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines F of the SOR.

The Applicant has a long history of failing to meet her financial obligations, and an inability to satisfy debts that date back to 1997. At the present time, the Applicant has not resolved her delinquent debts. Her most recent credit reports

show that each of the six debts are still owing and have not been paid. Although she states that she has recently hired an attorney to help her resolve her past due debts, she has failed to submit any documentation to substantiate this. Without supporting evidence, the fact that some of the accounts have been charged off does not relieve the Applicant of her liability for the debts. *Under Guideline F, Disqualifying Conditions, (1) A history of not meeting financial obligations, and (3) Inability or unwillingness to satisfy debts* apply. None of the mitigating factors apply. Accordingly, Guideline F is found against the Applicant. The Applicant may be eligible for a position of trust in the future, but not at this time.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a determination of trustworthiness. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for Applicant to hold an ADP-I position.

Darlene Lokey Anderson

Administrative Judge